



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

Office of Administrative Law Judges

Mail Code A-110

April 20, 1988



CERTIFIED MAIL--RETURN RECEIPT REQUESTED

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Subject: Ellicott Machine Corporation  
Docket No. TSCA-III-315

To the Parties:

As you have been previously notified, I have been designated by order of the Chief Administrative Law Judge dated April 15, 1988 to preside in this proceeding under the Toxic Substances Control Act, Section 16(a), 15 U.S.C. 2615(a).

Agency policy encouraging settlement is expressed in the rules of practice governing these proceedings, 40 C.F.R. 22.18(a), and you may be attempting to settle this matter. Counsel for Complainant is requested to file in this proceeding by June 3, 1988, a statement with respect to whether a settlement has been reached or the status of settlement negotiations.

If the case is not settled by that date, I propose to accomplish by this letter some of the purposes of a prehearing conference, as permitted by the rules of practice, 40 C.F.R. 22.19(e).



Accordingly, it is directed that the following prehearing exchange take place:

By Complainant and Respondent

1. As required by the rules of practice, 40 C.F.R 22.19(b), each party shall submit the names of the expert and other witnesses intended to be called at the hearing with a brief narrative summary of their expected testimony, and copies of all documents and exhibits intended to be introduced into evidence. The documents and exhibits shall be identified as "Complainant's" or "Respondent's" exhibit, as appropriate, and numbered with Arabic numerals (e.g., Complainant's Ex. 1).
2. Each party shall submit its views as to the place of hearing. See the rules of practice, 40 C.F.R 22.21(d) and 22.19(d).

To the extent not covered by the foregoing, the following should also be submitted:

By Complainant

1. Submit a copy of the inspection report with all pertinent attachments.
2. State the Complainant's position as to the matters alleged in the section of the Respondent's answer entitled "DEFENSES" wherein it is contended that penalties based upon alleged violations occurring more than five years before the complaint was filed are barred by the general five (5)-year statute of limitations in 28 U.S.C. § 2462.
3. Show how the proposed penalty conforms to the TSCA Civil Penalty Guidelines and the PCB Penalty Policy, 45 Fed. Reg. 59770, 59776.

By Respondent

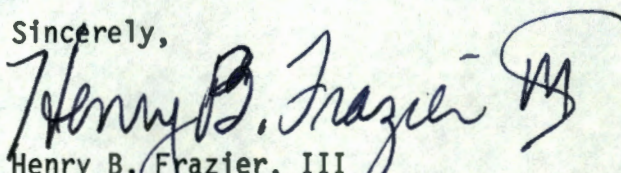
1. State the basis for Respondent's defense that penalties based upon alleged violations occurring more than five years before the complaint was filed are barred by the general five (5)-year statute of limitations in 28 U.S.C. § 2862.
2. If Respondent intends to contest the proposed penalty on the grounds that it is unable to pay the proposed penalty, or that payment will have an adverse effect on Respondent's ability to continue to do business, furnish certified copies of Respondent's statement of financial position (or in lieu thereof copies of Respondent's Federal tax return) for the last fiscal year.



If the case is not settled, the prehearing exchange directed above should be made no later than July 1, 1988. The parties will then have until July 11, 1988, to reply to statements or allegations of the others contained in responses to this letter. The original of the responses and replies shall be sent to the Regional Hearing Clerk and copies, with any attachments, shall be sent to the opposing party and to this office.

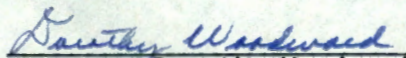
Upon receipt of the requested responses and replies, consideration will be given to whether further correspondence is desirable or whether the matter will be scheduled for a hearing.

Sincerely,

  
Henry B. Frazier, III  
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that the original of this letter was mailed to the Regional Hearing Clerk, U.S. EPA, Region III, and copies were sent certified mail, return receipt requested to counsel for Complainant and Respondent in this proceeding on this 20th day of April 1988.

  
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Dorothy Woodward  
Secretary